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FEDERAL ELECTION COMMISSION  
OFFICE OF THE GENERAL COUNSEL

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August 1, 1996

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Lawrence M. Noble  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
6th Floor  
Washington, D.C. 20463

**Re: Complaint Against Mark Sharpe, et al.**

Dear Mr. Noble:

The undersigned files this complaint charging violations of the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), 2 U.S.C. §§ 431 et seq. and related regulations of the Federal Election Commission ("FEC" or the "Commission"), 11 C.F.R. §§ 100.1 et seq., by Mark Sharpe, Friends of Mark Sharpe, Rick Fontaine, as treasurer for Friends of Mark Sharpe, Joe Kadow, and Outback Steakhouse, Inc. (referred to collectively as the "Respondents").

According to publicly available documents and published newspaper accounts, it appears that Respondents may have engaged in a wide-ranging scheme to violate the federal election laws. Although the full extent of the conduct in question cannot be determined without further investigation by the FEC, it appears that Respondents may have undertaken a systematic effort to violate the Act's reporting requirements, source restrictions, and contribution limits. Specifically, as detailed more fully below and in the attached news account from the Tampa Tribune, it appears that Sharpe may have been at the center of an effort to funnel contributions from the Outback Steakhouse, Inc. and its executives and employees to his campaign committee, Friends of Mark Sharpe. The evidence further suggests that Sharpe and the others involved with the campaign may have misreported information to the FEC.

**A. Earmarking Violations**

Respondent Joe Kadow is described by the Tampa Tribune as "Outback's corporate attorney." According to the Tampa Tribune article, during Sharpe's 1994

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congressional campaign, Kadow would routinely "arrive at the campaign office late at night, often delivering checks for Sharpe's congressional bid." One Sharpe volunteer stated that Kadow would come to the campaign office "bringing in lots of checks." Indeed, according to the article Kadow may have been responsible for delivering upwards of \$94,000 worth of contributions from Outback connected people to Sharpe and his campaign.

Commission regulations clearly provide that if a contribution's conduit or intermediary, such as Kadow, "exercises any direction or control" over the contributions, then the contribution must count against the overall \$1,000 per election contribution limit of both the contributor as well as the conduit/intermediary. 11 C.F.R. § 110.6(d)(2). In addition, both the campaign and Kadow as the intermediate/conduit would be required by Commission regulation to file public reports detailing the transactions. 11 C.F.R. § 110.6(c). There is little doubt that under existing Commission interpretation and application of "direction or control" Kadow would be considered a conduit who exercised sufficient control as to have the contributions count against his limit. Thus, the tens of thousands of dollars in checks collected and delivered by Kadow should have been counted against his individual contribution limit. To the extent that those checks obviously exceeded his \$1,000 contribution limit he, as well as the campaign, has violated the Act's contribution limits. Furthermore, to the extent that neither the campaign nor Kadow filed the appropriate reports of conduit contributions, they have violated the reporting requirements of the Act.<sup>1</sup>

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<sup>1</sup> Although Commission regulations do make exceptions to the earmarking regulations cited above, Kadow clearly does not qualify. See 11 C.F.R. § 110.6(b)(2)(i). For example, Kadow cannot claim to have been an employee or full-time volunteer of the campaign, a commercial fund-raiser, or "an individual who is expressly authorized by the candidate or the candidate's authorized committee to engage in fund-raising, and who occupies a significant position within the candidate's campaign organization." *Id.* Indeed, as the Tampa Tribune article points out, "[w]hen first interviewed, Kadow described himself as a volunteer who offered Sharpe opinions but had no formal role in the campaign." Although Kadow later changed his story by stating that he considered himself to be "a significant advisor" to the campaign and an authorized fund-raiser, such unsupported assertions made after the fact do not bring Kadow's conduct within the scope of § 110.6. There is no evidence, for example, that Kadow was "expressly authorized" by Sharpe or his campaign to engage in fund-raising and there is even less evidence that Kadow "occupied a significant position within the candidate's campaign

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## **B. Filing Incomplete and Inaccurate FEC Reports**

Federal law requires the treasurer of a political committee to report contributions from an individual that, in the aggregate, exceed \$200 per election. 11 C.F.R. § 104.3(a)(4); see also 11 C.F.R. § 100.12. In addition to the name of the contributor, and the amount of the contribution, the treasurer must furnish the Commission with the contributor's address, occupation, and employer. In those instances that a contributor fails to provide the necessary information, the treasurer is required to use his or her "best efforts" to obtain the missing information. 11 C.F.R. § 104.7. Under Commission regulations, in order for the treasurer to fulfill his or her "best efforts" requirement, he or she must make at least one effort after receipt of the contribution to obtain the missing information. 11 C.F.R. § 104.7(b)(2). According to FEC regulations, "[t]he request must clearly ask for the missing information," and must include the following statement: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year." See 11 C.F.R. § 104.7(b)(2).

According to the Tampa Tribune, Sharpe along with the other Respondents engaged in a "pattern of incomplete disclosure of Outback related donations on finance reports provided to the Federal Election Commission." Indeed, the attached article cites numerous instances in which individuals' occupations and addresses were misreported to the FEC.

For example, the article cites a contribution by Mel Danker, an individual identified on Sharpe campaign finance reports as "retired" but who was almost simultaneously reported as working for "Outback" by another congressional campaign. Similarly, the article notes a \$1,000 contribution reportedly made by Kimberly Brown to the Sharpe campaign. However, when asked about her contribution she told the newspaper "I think it was my husband's contribution." Not surprisingly, her husband is an officer at a New England Outback franchise. Furthermore, Ms. Brown's contribution was listed under her maiden name rather than her married last name. According to the Tampa Tribune, "at least \$45,000 went to the

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organization." Indeed, Kadow's statements that he had "no formal role in the campaign" would appear to settle the matter.

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Sharpe campaign from people connected to Outback who did not disclose their Outback connection."

The Tampa Tribune article also lists numerous instances in which campaign treasurer Fontaine admits having supplied the address for Outback's Tampa headquarters in lieu of the contributor's real address. For example, the Sharpe campaign reported a self described homemaker's address as 550 N. Reo St. -- the address of Outback's Tampa headquarters. In the article, Fontaine states that he routinely provided similar false information at the instruction of Kadow.

The provision of inaccurate information regarding the occupations and addresses of contributors constitutes blatant and serious violation of the FECA. By providing false information to the FEC, Sharpe and his associates concealed the true source of the support that he was receiving in his 1994 campaign. Furthermore, contrary to the requirements of federal law and Commission regulations, it does not appear that Fontaine, Sharpe, or anyone else involved in the campaign made any effort to comply with the best efforts requirements. Instead, the Tampa Tribune article suggests that the campaign simply "made up" information that it had every reason to believe was false. To the extent that Fontaine now admits that this was done knowingly, willfully and systematically, the violation is even more serious.

Finally, and perhaps most disturbingly, the incident involving the contribution by Ms. Brown raises the very serious question of whether Sharpe and Kadow were knowingly involved in soliciting and accepting contributions that were made in the name of another. Federal law specifically prohibits the making of a contribution in the name of another. 11 C.F.R. § 110.4(b). If, indeed, the contribution listed as being made by Ms. Brown was in fact made by her husband, it appears that Sharpe and his campaign have violated the prohibition against soliciting and accepting contributions made in the name of another. In light of the seriousness of such activities, the undersigned specifically requests that the Commission conduct an immediate and full-scale investigation of the Sharpe campaign to determine whether this was a single isolated incident or a more frequent practice by Sharpe and his campaign.

### C. Illegal Corporate Contributions

Finally, it appears that Sharpe and those around him, may have engaged in a regular pattern of using Outback corporate resources to aid his federal campaign.

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Federal law prohibits corporations from making any contribution in connection with federal elections. 11 C.F.R. § 114.2(b). This includes the general "facilitating" of contributions through the provision of corporate resources, 11 C.F.R. § 114.2(f), as well as providing campaigns with direct access to corporate facilities such as airplanes. 11 C.F.R. § 114.9(e). The Tampa Tribune article notes at least two specific instances where Sharpe and his associates, including House Speaker Newt Gingrich, accepted the use of an Outback corporate jet. Although the article notes that Sharpe's campaign reimbursed Outback for the cost of the flight, federal law required Sharpe's campaign to pay Outback in advance for the use of the corporate plane. Indeed, FEC regulations could not be clearer: "A candidate, candidate's agent, or person traveling on behalf of a candidate who uses an airplane which is owned or leased by a corporation . . . must, in advance, reimburse the corporation." 11 C.F.R. § 114.9(e) (emphasis added). Thus, Sharpe and those around him who benefited from the use of the corporate resources may have violated federal laws against accepting corporate contributions if, in fact, Outback was not paid in advance for their use.

The article also cites Sharpe's current campaign manager as stating that the restaurant chain "will host a fund-raiser for Sharpe next month." The Commission has long held that a corporation may not "facilitate" the making of contributions to federal candidates. See generally, 11 C.F.R. § 114.2. Thus, the corporation may not use corporate personnel and facilities to arrange and organize a fundraising event unless it is properly reimbursed for its expenses. Indeed, in one recent criminal case from the District of Massachusetts, the government charged a company with having criminally violated the Act by, among other things, using corporate facilities to solicit contributions, using corporate employees to arrange fundraising events on company time, and using corporate facilities to host fundraising events.

In light of Sharpe's poor record in the past of complying with federal campaign laws, and the apparent role that Outback played in his past fundraising efforts, it appears quite likely that in this instance as well, Outback corporate resources may be used to benefit Sharpe's campaign in violation of federal law.

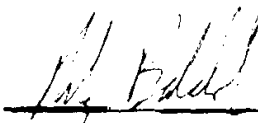
#### **D. Conclusion**

The facts and potential violations of federal campaign laws outlined above are the product of publicly available records and one reporter's efforts to analyze Sharpe's campaign activities. Whether this constitutes the full extent of the illegal activities or

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only the "tip of the iceberg" can only be determined by a thorough and prompt investigation by the FEC. In light of the fact that these violations occurred in 1994 and the fact that Sharpe is again a candidate for Congress in 1996, the Commission should act promptly so as to prevent Sharpe from further violating the campaign laws. If, after such investigation, the facts demonstrate that Sharpe and his campaign engaged in a concerted and willful effort to provide false information to the FEC regarding the identity, address, and occupation of contributors and accepted illegal contributions from both its conduit Kadow and from the Outback Steakhouse, Inc., then the undersigned calls upon the Commission to impose the stiffest civil penalty provided for by law. Furthermore, if such violations prove to be the case, then the undersigned requests that the Commission seek to impose an injunction against Sharpe and the other Respondents prohibiting them from continuing this course of illegal conduct. Finally, if the facts support it, the undersigned asks that this matter be referred to the United States Attorney for the Southern District of Florida for further investigation by grand jury.

Very truly yours,



Nick Baldick for the  
Florida Democratic Party

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STATE OF FLORIDA

County of LEON

SUBSCRIBED AND SWORN to before me this 7<sup>th</sup> day of AUG, 1996.

Larvie Bauman  
Notary Public

**My Commission Expires:**

**LAVONE BAUCHAM**  
Notary Public, State of Florida  
My Commission Expires June 26, 2000  
Commission #CC 567737